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Paper No. 75

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**AIR MAIL**

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**NOV 19 2001**

**OFFICE OF PETITIONS**

In re Application of :  
Philippe J.H. Berna : DECISION ON PETITION  
Application No. 08/580,493 :  
Filed: December 29, 1995 :  
For: PROCESS FOR MAKING A VERSATILE :  
CLAMPING DEVICE DESIGNED TO HOLD :  
OBJECTS WITHOUT DAMAGING :  
THEM, SUCH A DEVICE AND ITS USE :

This is a decision on the petition filed November 8, 2001, requesting that the continuation application filed under former 37 CFR 1.62, be treated as a request for continued examination (RCE) under 37 CFR 1.114, rather than as an application filed under 37 CFR 1.53(d).

The rules and statutory provisions governing the operations of the United States Patent and Trademark Office (Office) require payment of a fee upon filing a petition. In this instance, the fee required is \$130.00. See 37 CFR 1.17(h). The petition in the above-identified application was not accompanied by payment of the required fee. Accordingly, the petition is **dismissed**. However, in the interest of time, applicant may wish to note the following with regard to the present petition.

On March 16, 2001, the Office mailed a final Office action, which set a three-month shortened statutory period for reply. In response, applicant submitted amendments on May 14, 2001, and May 22, 2001. On June 12, 2001, the Office advised applicant that the amendments failed to place the application in condition for allowance, and therefore, would not be entered. On August 23, 2001, applicant filed a request for a filewrapper continuation application under former rule 37 CFR 1.62 and an amendment. Additionally, applicant requested a two-month extension of time on August 23, 2001, and a one-month extension of time on September 13, 2001. On November 8, 2001, applicant submitted the present petition requesting that the continuation

application filed under former 37 CFR 1.62, be treated as a request for continued examination (RCE) under 37 CFR 1.114, rather than as an application filed under 37 CFR 1.53(d).

The Office reminds applicant that 37 CFR 1.62 was deleted effective December 1, 1997. See 1203 O.G. 63, October 21, 1997. A continuation or divisional application filed under former 37 CFR 1.62 on or after December 1, 1997, will be treated as an application filed under 37 CFR 1.53(d) unless the application is a utility or plant application filed on or after May 29, 2000, in which case it will be treated as a request for continued examination (RCE) under 37 CFR 1.114. See MPEP 706.07(h).

In the present petition, applicant asserts that the filewrapper continuation application should be treated as a RCE instead of a CPA because the prosecution was closed, an amendment was submitted with the correct fee, and all the requirements of 37 CFR 1.114 were met. See *Petition dated 11/8/01, p. 1*. Applicant further asserts that he filed the filewrapper continuation application only because the prosecution of the application was closed and he was unaware that 37 CFR 1.62 had been "made void." Id. Applicant states that he was only seeking continuation of examination of the application which is evidenced by his submission of an amendment of the claims. Id.

Initially, the Office notes that applicant previously filed a CPA on May 15, 2000. Since the prior application was filed before May 29, 2000, the filing of a second CPA is permissible. The request for a filewrapper continuation application under former 37 CFR 1.62 was clearly a request for a continuing application. A CPA is a continuing application whereas a RCE is not. Furthermore, a proper CPA cannot be converted to a RCE.

Accordingly, the request for a continuation application under former 37 CFR 1.62 filed on August 23, 2001, is being treated as a CPA under 37 CFR 1.53(d).

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    Box DAC  
                    Washington, DC 20231

By FAX:           (703) 308-6916  
                    Attn: Office of Petitions

By hand:           Crystal Plaza 4, Suite 3-C23  
                    2201 S. Clark Place  
                    Arlington, VA

Telephone inquiries regarding this decision may be directed to the Office of Petitions (703) 305-9282.

A handwritten signature in cursive script, appearing to read "M. Q. Antonakas".

Manuel Antonakas, Director  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

CTD